UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER SADOWSKI,	:	
Plaintiff,	:	Index No. 16-cv-9164 (PGG)
-against-	:	**ANSWER TO COMPLAINT**
PENSKE MEDIA CORPORATION,	:	ECF Case
Defendant.	:	

Defendant Penske Media Corporation ("Defendant"), for and as its Answer to the Complaint filed by Plaintiff (Doc. No. 1), answers and alleges as follows:

Response to the Nature of the Action

1. Defendant admits that this purports to be an action for copyright infringement under Section 501 of the Copyright Act and that Plaintiff seeks monetary relief, but denies that Plaintiff is entitled to any such relief. Defendant lacks knowledge or information sufficient to form a belief as to whether Plaintiff is a New York City based photojournalist, and denies the remaining allegations of this paragraph.

Response to Jurisdiction and Venue

2. This paragraph asserts a legal conclusion to which no answer is required. To the extent an answer may be required, Defendant does not contest the jurisdiction of this Court.

3. Defendant admits that it resides and is doing business in New York. The remaining allegations of this paragraph assert a legal conclusion as to which no answer is required. To the extent an answer is required, Defendant does not contest that this Court has personal jurisdiction.

4. This paragraph asserts a legal conclusion to which no answer is required. To the extent an answer may be required, Defendant does not contest the venue of this Court.

Response to Parties

5. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

6. Defendant admits the allegations contained in this paragraph.

Response to Statement of Facts

A. Response to Background and Plaintiff s Ownership of the Photographs

7. Defendant admits that Exhibit A to the Complaint contains a copy of a photograph of the exterior of the Carnegie Delicatessen located in New York, New York (the "Photograph") and respectfully refers the Court to this Exhibit for the contents thereof. Defendant denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

8. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

9. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

B. Response to Defendant's Infringing Activities

10. Defendant admits that, on or about September 30, 2016, a portion of the Photograph accompanied a news article entitled "Carnegie Deli Closing: New Yorkers Crushed Over News of Restaurant Shutting Down," available at the web address: http://hollywoodlife.com/2016/09/30/carnegie-deli-closing-new-york-city-shutting-down/. Defendant also admits that the Complaint purports to contain an Exhibit B which speaks for itself, and to the extent

a response is required, Defendant respectfully refers the Court to the Exhibit. Defendant denies the remaining allegations in paragraph 10 of the Complaint.

11. Defendant admits that it did not license the Photograph from Plaintiff nor did it have Plaintiff's permission or consent to display the Photograph, but denies the allegations contained in Paragraph 11 to the extent that paragraph assumes that Defendant required permission from Plaintiff in order to publish the Photograph.

Response to First Claim for Relief

12. Defendant repeats and re-alleges its responses to each and every allegation contained the paragraphs set forth above.

13. Defendant denies the allegations of this paragraph.

14. Defendant denies the allegations of this paragraph.

15. Defendant denies the allegations of this paragraph.

16. Defendant denies the allegations of this paragraph.

17. Defendant denies the allegations of this paragraph.

18. Defendant denies the allegations of this paragraph.

19. Defendant denies the allegations of this paragraph.

GENERAL DENIAL

Each numbered paragraph in this Answer responds to the identically numbered paragraph in the Complaint. Defendant denies all allegations, declarations, claims or assertions in the Complaint that are not specifically admitted in this Answer.

DEFENSES

By alleging the separate and additional defenses set forth below, Defendant is not in any way agreeing or conceding that it has the burden of proof or the burden of persuasion on any of these issues.

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. On information and belief, Plaintiff's claim is barred, in whole or in part, to the extent any copyright registration asserted by Plaintiff as covering the Photograph is invalid and/or unenforceable.

THIRD DEFENSE

3. Plaintiff's claim is barred in whole or in part by the defense of license and/or implied license arising from agreements between Defendant and other parties for use of the Photograph alleged in the Complaint, as well as any course of dealing with any such parties.

FOURTH DEFENSE

4. Plaintiff's claim is barred in whole or in part by the doctrine of fair use.

FIFTH DEFENSE

5. Plaintiff's claim for statutory damages is barred in whole or in part to the extent that Defendant has not willfully infringed any intellectual property or other rights owned by Plaintiff and because Defendant has acted in good faith and without any intention of injuring Plaintiff.

SIXTH DEFENSE

6. Plaintiff's claim is barred, in whole or in part, by estoppel.

SEVENTH DEFENSE

7. Plaintiff's claim is barred, in whole or in part, because he has failed to mitigate damages.

EIGHTH DEFENSE

8. Plaintiff's claim is barred to the extent it seeks statutory damages that, when measured against any actual damage suffered by Plaintiff, would be excessive, obviously unreasonable and wholly disproportionate in violation of the Due Process clause.

NINTH DEFENSE

9. Upon information and belief, Plaintiff's claims are barred, in whole or in part, by Plaintiff's lack of standing.

ADDITIONAL DEFENSES

Defendant hereby gives notice that, due to its incomplete knowledge as to the matters set forth in the Complaint, it is unable to determine whether it has additional defenses not expressly enumerated in the preceding paragraphs or elsewhere in this Answer. Defendant thus reserves its right to amend its Answer to assert additional defenses and to rely upon those additional defenses to the extent they become available or apparent during discovery or further proceedings in this action.

JURY DEMAND

Defendant demands a trial by jury of all issues triable by jury.

WHEREFORE, Defendant respectfully requests that:

a. Plaintiff's Complaint be dismissed in its entirety;

b. Defendant be awarded its costs, including reasonable attorneys' fees; and

c. Such other relief as the Court deems just and proper.

Dated: December 20, 2016
New York, NY

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: /s/ *Rachel F. Strom*

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2016, I caused a true copy of the **ANSWER TO COMPLAINT** to be served via ECF upon all counsel of record.

By: *s/ Rachel F. Strom*
Rachel F. Strom